

### REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Claims 1, 3-7 and 20-33 are present in this application. Claim 33 is added. New claim 33 is believed to be supported by the specification and thus no question of introduction of new matter is believed raised.

In the prior Office Action (Jan 25, 2007), claims 1, 3-7 and 20-32 were rejected under 35 U.S.C. § 103(a) over JP 2002-226926 (Yamauchi) in view of US 2002/0015878 (Tsumura).

The present invention as claimed in the present application is directed to a fuel cell catalyst material, a membrane electrode assembly and a fuel cell. Each of the material, assembly and fuel cell includes platinum-containing nitride particles as catalyst particles substantially represented by  $AT_xN_u$  where A, T and N contain various elements as recited in claims 1, 6 and 7, and the average diameter of the catalyst particles is 0.5 nm to 500 nm. At least a part of the platinum is present in the form of a nitride. The material, membrane electrode assembly and fuel cell having such catalyst particles are more efficient as compared to prior art materials, assemblies and fuel cells. Further, the catalyst particles with an average diameter within the range from 0.5 nm to 500 nm provide further improved characteristics of the catalyst.

Turning to the prior art rejections, Yamauchi does not suggest the platinum-containing nitride particles recited in claims 1, 6 or 7, as stated in the Office Action on page 4. Tsumura is relied upon to teach the diameter of the platinum-containing nitride particles. Referring to the Advisory Action, the Examiner takes the position that the Applicant must provide objective evidence as to why the prior art does not read on the claimed particle size, in particular, factual support that the particles made by Yamauchi are outside of the claimed range.

However, a §103(a) rejection requires (1) a reasonable expectation of success and (2) the prior art to teach or suggest all claim elements. With regard to (1), the Office Action makes no showing that, using the teachings of Yamauchi and Tsumura, one would obtain *platinum-containing nitride particles* having the claimed *range of diameters*. As pointed out previously, Yamauchi gives no guidance on what range is appropriate and thus gives no guidance on what one skilled in the art would consider a routine optimization. Also, Tsumura does not contain any suggestion as to how to obtain *platinum-containing nitride particles* having the claimed *range of diameters*. One skilled in the art has little expectation of success using the cited prior art as it contains *no* guidance regarding how to obtain the claimed platinum-containing nitride particles.

Neither Yamauchi nor Tsumura teach the claimed platinum-containing nitride particles, as recognized in the Office Action, and neither reference suggests that the teachings of Tsumura would be applicable to platinum-containing nitride particles as recited in claims 1, 6 and 7.

The §103 rejection is deficient as neither a showing of reasonable expectation of nor a showing that all claim elements are taught or suggested by the cited prior art is made. It is respectfully submitted that the present application is in condition for allowance, and a favorable decision to that effect is respectfully requested.

Respectfully submitted,

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